

Organizing for National Security: Unification or Coordination?

by James M. Keagle and Adrian R. Martin

Overview

Experience gained from the 9/11 attacks, combat in Iraq and Afghanistan, disaster assistance during and after Hurricane Katrina, and the ongoing war on terror provides the basis for amending our anachronistic national security structures and practices. Many analysts and officials have called for a second-generation version of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 to address the array of organizational and management challenges that we face. Some argue that the new security environment requires even more fundamental change, similar to what was enacted after World War II. The principal legislation that emerged from that era was the National Security Act of 1947. Goldwater-Nichols aimed to fix inter-Service problems by streamlining the chain of command and promoting “jointness” but did not fundamentally alter the structure of the U.S. military.

These earlier efforts attempted to strike a balance between those who wanted to unite bureaucracies to improve efficiency (primarily resource considerations) and produce more effective outcomes and those who opposed potentially dangerous concentrations of power and desired to preserve their heart-and-soul missions (as well as congressional support for their strategic view and related combat systems and force structures). Today, the debate rages anew with the security of this nation dependent on the outcome.

This paper explores two options for reorganization: unification and coordination. We investigate each against the backdrop of the two previous attempts at reorganization in the context of the Madisonian political culture that constitutes part of who we are as a nation. Finally, each option is judged against its ability to contribute to the development and implementation of the kinds of strategies and operations needed to wage the new kind of war and peace in the emerging global security environment.

National Security Act Legacy

The National Security Act (NSA) of 1947 produced new organizations, new names for existing organizations, and new and redistributed roles and missions across the entire national security community.

After World War II, there was a general sense that the United States could do much better integrating and coordinating the efforts of the military Services. Battlespaces and related strategies—even theaters of operation—had been divided between the Army and Navy, both independent-minded Services. It was a world of fiefdoms. The proposed solution was unification—a single, Cabinet-level department—a concept that initially had more support within the Army than the Navy.

As the Cold War began, the defense unification debate became a discussion about the broader national security community. Attempting to balance the competing concerns of unification and parochial Service interests, the NSA:

- established the National Security Council
- established the Central Intelligence Agency
- established the National Security Resources Board
- established the Air Force and gave each of the three military Services Cabinet rank
- created the Joint Chiefs of Staff as a permanent agency
- designated the Secretary of National Defense as overseer of the National Military Establishment
- authorized the unified and specified commands.

These new structures fueled rather than ended the debate. In 1948, neither the Key West Agreement nor the Newport Agreement resolved tensions over roles and missions,¹ which led to the dispute over the strategic bombing mission between the Navy and Air Force known as the Revolt of the Admirals.² In 1949, Congress inched in the

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direction of unification with amendments to the NSA that removed the Service secretaries from the National Security Council and reduced their rank below Cabinet level, renamed the National Military Establishment the Department of Defense, expanded the authority of the Secretary of Defense (principally by subordinating the military Service secretaries to the Defense secretary), and created the Office of the Chairman of the Joint Chiefs.³

The NSA further unified and consolidated authority in the President through the centralization of covert action. In the 1970s, amendments to the NSA provided for congressional oversight. The President retained sole control of covert action but is legally obligated to inform Congress of all covert action, except under extraordinary circumstances in which he can choose to inform only congressional leaders. While covert action is now more centralized within the executive, it is also more accountable to the other branches of government. However, as Louis Henkin has written, “Presidents have resisted even the requirement to inform Congress [of covert actions] . . . because presidents know that knowledge is power, that the need to report and inform deters and circumscribes, that requests for information are a form of congressional regulation, and that information will engender further regulation.”⁴ Although the NSA definition of *covert action* is relatively straightforward, it creates vague exceptions in which the President does not need to inform Congress.⁵ This results in the President’s asserting a national security prerogative, claiming ownership of the “zone of twilight” that exists due to vagueness in the law and uncertainty regarding the distribution of Presidential and congressional authority.⁶

Toward Goldwater-Nichols

The Defense Reorganization Act of 1958 gave another legislative push to greater unification and improved coordination, the key objectives of the NSA of 1947. Despite enhanced roles for the Secretary of Defense and his office, as well as the Chairman of the Joint Chiefs of Staff and the Joint Chiefs themselves, Robert McNamara inherited a system still dominated by the legacy of Service fiefdoms in the critical areas of roles and missions, force development, and budget. McNamara’s managerial revolution focused on a planning, programming, and budgeting system and its associated systems analysis. It raised the competition among the Services and ultimately placed final funding decisionmaking authority with the Secretary of Defense.

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General David C. Jones, USAF, Chairman from 1978 to 1982, concisely described the central problem for defense forces and the need for jointness: “the military services . . . are essentially vertical organizations with clearly defined roles and missions. With the advent of air power, the lines became blurred and the need for jointness—the horizontal—increased sharply.”⁷

Outspoken in favor of reform, General Jones ultimately sought reform through legislation and took his fight to the House Armed Services Committee:

It is not sufficient to have just resources, dollars and weapon systems. We must have an organization which will allow us to develop the proper strategy, necessary planning, and the full warfighting capability. We do not have an adequate organizational structure today.⁸

That new organization was codified in the Goldwater-Nichols Act of 1986, which increased the power of both the Secretary and Chairman in the hope that their broad, department-wide perspectives would counteract Service parochialism. It further raised the stature of the Chairman, making him the principal military advisor to the President, National Security Council, and Secretary of Defense, and increasing his responsibilities in strategic planning, logistics, net assessments, joint doctrine, and programs and budgets. The Chairman gained an expanded

Joint Staff directly under his control and a Vice Chairman, who outranked all the Service chiefs and other military officers. The power of the unified and specified commanders also grew, with direct reporting to the President through the Secretary of Defense. Finally, personnel and joint professional military education systems were set in place to ensure that high-quality officers would participate in joint duty.

Goldwater-Nichols ranks among the Senate Armed Services Committee’s most important legislative accomplishment in its first 50 years. Although the legislation went a long way toward facilitating more jointness in the military, the conduct of the Gulf War showed that there are still significant hurdles to be overcome. Many of these hurdles were related to the Service-specific budgeting and acquisitions process, which caused anxiety—each Service sought to increase its role in the conflict (as well as the role of specific weapons systems) to justify past and future acquisitions. Other hurdles resulted from differences in doctrines, as well as differences in belief in the military effectiveness of the different Services and the centrality of their role to waging war.⁹ It is unclear whether these differences will wither away as a cohort of officers rises who learned their trade in a joint environment, or whether further reform might be required.

The 9/11 Attacks

Chapter 13 of the *9/11 Commission Report* is entitled “How to Do It? A Different Way of Organizing the Government.”¹⁰ The first four sections deal with unity of effort across the foreign-domestic divide, in the Intelligence Community, in information-sharing, and in Congress; the last section addresses organizing America’s defenses in the homeland. Collectively, they call for new organizations and new ways to conduct this new kind of war. The 9/11 Commission’s call for action reminds us of similar calls for greater unity of effort and reorganization to address the challenges the Soviet Union, communism, and the Cold War posed to American security. In the Commission’s words:

We learned that the institutions charged with protecting our borders, civil aviation, and national security did not understand how grave this threat could be, and did not adjust their policies, plans, and practices to deter or defeat it. We learned of the fault lines within our government—between foreign and domestic intelligence, and between and within agencies. We learned of pervasive problems of managing and sharing information across a large and unwieldy government that had been built in a different era to confront different dangers. . . . We have been forced to think about the way our government is organized. The massive departments and agencies that prevailed in the great struggles of the twentieth century must work together in new ways, so that all the instruments of power can be combined.¹¹

The Commission proposed that jointness be taken to the next level—from within agencies and departments, to the interagency and international communities.

Iraq and Afghanistan

The Iraq Study Group Report sounds a familiar theme, trumpeting once again a call for unity of purpose and action:

What we recommend in this report demands a tremendous amount of political will and cooperation by the legislative and executive branches of the U.S. government. It demands skillful implementation. It demands unity of effort by government agencies. And its success depends on the unity of the American people in a time of political polarization. Americans can and must enjoy the right of robust debate within a democracy. Yet U.S. foreign policy is doomed

to failure—as is any course of action in Iraq—if it is not supported by a broad, sustained consensus.¹²

Any discussion of reorganizing the national security bureaucracy will necessarily deal with the question of organizing the military and supporting agencies around future large-scale, Iraq-style occupations, and the necessary development and retention of counterinsurgency expertise. These missions may be destined for failure when they are undertaken by an American democracy—counterinsurgency operations that last “nine to ten years”¹³ are unrealistic for an American public that faces no existential threat, holds elections every 2 years, and does not know how to reliably measure progress in counterinsurgency.

Hurricane Katrina

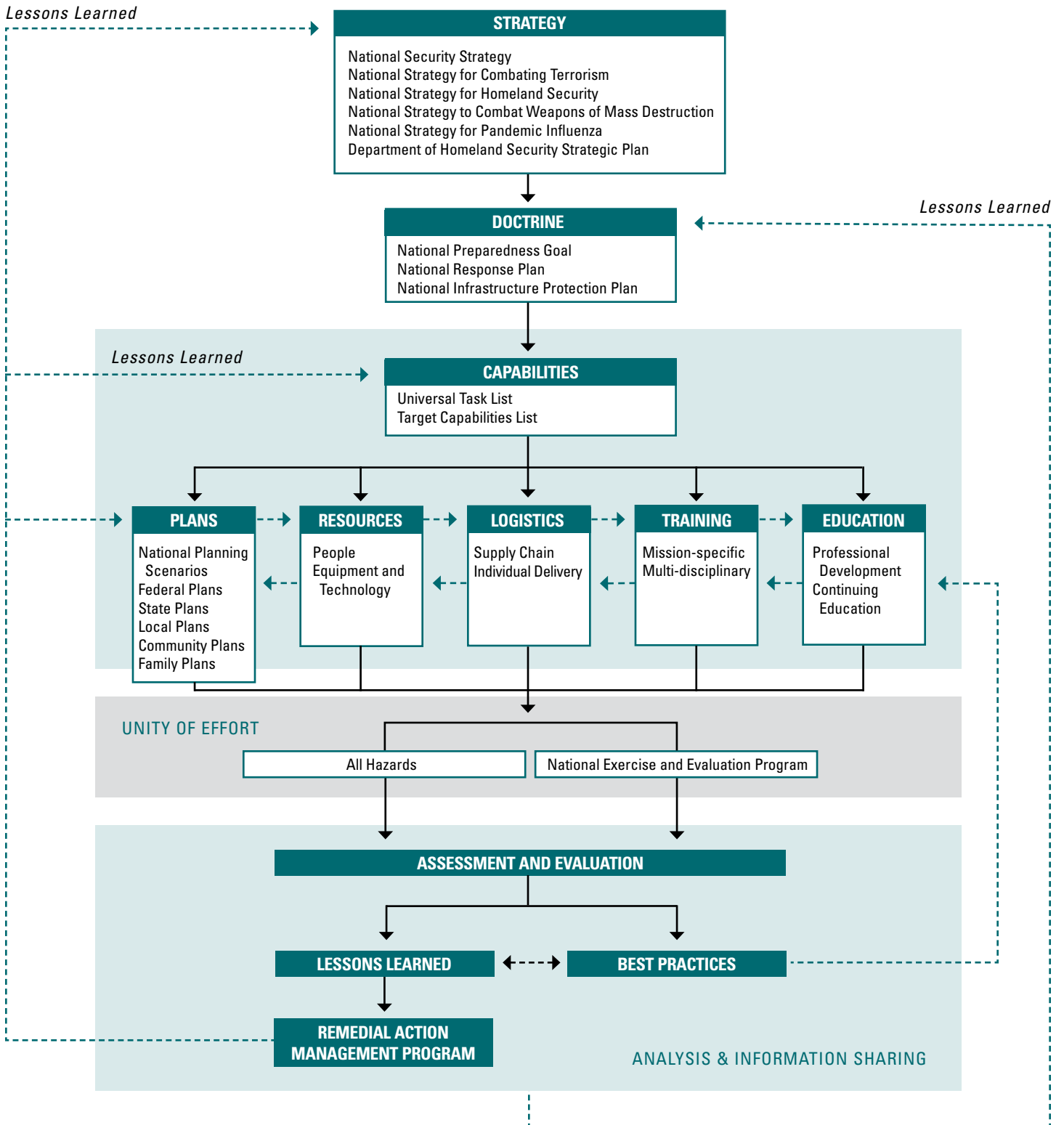
Hurricane Katrina tragically reminded us of another dimension of the security challenge: natural disasters. As President George W. Bush noted during the immediate aftermath of the storm’s landfall, “The government will learn the lessons of Hurricane Katrina. We are going to review every action and make necessary changes so that we are better prepared for any challenge of nature, or act of evil men, that could threaten our people.”

Naturally, hurricanes have happened before in American history, and an argument can be made that the failures of the response to Katrina were personal failures of leadership, rather than institutional and structural failures. Blame should be equally apportioned. One of the goals of a hierarchy should be to facilitate effective leadership from above. In a disaster of the magnitude of Katrina, poor leadership and ineffective hierarchies combine in a negative feedback loop, leading to indecision and inaction.

Throughout its analysis, official White House examination of the Federal response to Hurricane Katrina calls for increased and improved planning, coordination, and command and control,¹⁴ and greater unity of effort, integration, and interoperability among the Departments of Homeland Security (DHS) and Defense, other executive branch departments and agencies, state and local governments, and the private sector.¹⁵

In contrast, a congressional report lists as its key problems poorly planned levees, nonexistent evacuations, failed execution of the National Response Plan, inadequate preparation by the Department of Homeland Security, communications failures, poor command and control, poor coordination with the military, the collapse of local law enforcement and lack of any backup plan to restore order, poor medical logistics, and failures at the Federal Emergency Management Agency (FEMA).¹⁶ While also highlighting institutional failures, the report focuses on issues of personal leadership. As its executive summary states, “The institutions

Figure: A Shared Vision of Preparedness



Source: Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina* (Washington, DC: U.S. Government Printing Office, 2006).

and individual failures we have identified became all the more clear when compared to the heroic efforts of those who acted decisively.”¹⁷

The White House report specifically examines national preparedness, arguing that it is “imperative that we integrate and synchronize our policies, strategies, and plans—among all Federal, State, local, private sector, and community efforts . . . into a unified system for homeland security.”¹⁸ After tracing the development of our national security system (including the NSA of 1947 and Goldwater-Nichols), the report calls for a similar transformation of organization and processes for homeland security to overcome an array of institutional and intergovernmental challenges to unity of effort, cooperation, and sharing:

These barriers stem from a multitude of factors—different cultures, lack of communication between departments and agencies, and varying procedures and working patterns among departments and agencies. Equally problematic, there is uneven coordination in pre-incident planning among State and local governments. . . . Furthermore, our current approach to response planning does not sufficiently acknowledge how adjoining communities and regions can and do support each other.¹⁹

The report also borrows from the command and control model for defense operations in making the case for greater unity of effort at the Federal level as the best example of how to overcome the “awkward mix of the traditional, FEMA-led approach to interagency coordination and the Homeland Security Act’s creation of a powerful Department of Homeland Security.”²⁰

The figure illustrates how our existing homeland security strategy, doctrine, and capabilities could be unified into a single national preparedness system. This concept ties together the priorities described throughout this section into a new transformational construct. The strengths of this system include first and foremost *integration* of strategy, doctrine, capabilities, response activities, and exercises, as well as assessment and evaluation. The figure depicts the feedback mechanisms that must be built into the system. In particular, as described above, the system must include routine reporting and assessment of program readiness of particular capabilities, as well as best practices and lessons learned from exercises and activities. These assessments and findings must be reported, as appropriate, to inform key components throughout the system.²¹

The report notes that more than just a shared vision is required. The most profound transformation will be creating a culture of preparedness:

A new preparedness culture must emphasize that the entire Nation—Federal, State, and local governments; the private sector; communities; and individual citizens—shares common goals and responsibilities for homeland security. In other words, our homeland security is built upon a foundation of partnerships.²²

Chapter six of the report concludes by noting how necessary and important this transformation is:

All required response assets and resources of the Federal government must integrate and synchronize to ensure an effective national response to a crisis. In practical terms, this entails stepping away from the bureaucratic view of a particular department or agency’s institutional interests. Instead, we must continually build preparedness partnerships across the Federal government as well as with State and local governments.²³

Transformation will involve reasonable and shared expectations about what the system can and cannot do—as well as the roles, missions, and responsibilities of each government at all levels, the private sector, and individuals. This is a daunting task indeed under any circumstances—and with Katrina we had days of warning as the hurricane gathered itself in the Atlantic and moved toward New Orleans.

Not all disasters will afford us that same warning time. Surprise

has always been a special challenge for strategists and planners. Recent indications suggest that the White House—specifically the National Security Coordinator—will theoretically be in charge, at least in the case of coordinating, implementing, and exercising contingency plans for continuity of government in the event of a decapitating covert nuclear attack on the capital. National Security

Presidential Directive 51 (also known as Homeland Security Presidential Directive 20) empowers the national continuity coordinator to assume responsibilities that FEMA and DHS had previously exercised.²⁴ This, too, is a different kind of threat and planning process than those envisioned during the Cold War. Then, the strategy was based on a response time of at least minutes if not hours as the Soviet Union prepared missiles for launch. Now, with warning times for some contingencies nearly nonexistent, planning has gone beyond airborne command posts and deep-bunkered command and control centers below existing headquarters. It includes wider-ranging geographic dispersion of leadership (for up to 100 weeks at a time), staff, and infrastructure.²⁵ It also reinforces the notion that we need better and more timely intelligence, more broadly and holistically shared across the intelligence and policymaking communities.

Others have taken different lessons from Katrina (as well as 9/11 and recent combat operations). One analyst argues that in this new era of globalization, large centralized bureaucracies with anticipatory functions will be unable to react to unforeseeable events that disrupt the infrastructure we depend on, whether those events are attacks such as 9/11 or natural disasters such as Katrina.²⁶ Instead, he advocates dynamic, decentralized resilience, placing the responsibility for security on small-scale resilient communities connected through open-source networks and platforms. This model, which is on the extreme “coordination” end of the spectrum, is a different take on Madisonian

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democracy, as power is distributed not between the branches of Federal Government but is largely devolved to local governments and shared with state and Federal agencies.

Madisonian Democracy

Whether the subject is separation of power, division of power, or constitutional liberties, the fundamental principle of Madisonian democracy is to disperse power throughout the structures (organizations) of government to avoid tyranny. As James Madison so aptly wrote over 200 years ago, “Ambition must be made to counteract ambition. You must first enable the government to control the governed; and in the next phase to control itself.”²⁷ We are social creatures who operate politically in groups. Any group, if given the opportunity, will tyrannize another. Tyranny of the majority was just as much a danger to our freedom as tyranny of the one—kingship. Hence, our constitutional system incorporated many of Madison’s principles designed to protect and preserve minority rights and frustrate the exercise of power. Gridlock, in a certain sense, has been preferable to tyranny. Inefficiencies, however bothersome, troublesome, and limiting, have powerful roots in our culture and legal foundations. Fiefdoms and protected parochial interests are well and legitimately entrenched in the American psyche.

Much of the preceding discussion urges the kind of consolidation and concentration of power (unity of effort) that could threaten our Madisonian principles. Therefore, it is essential to explore the appropriate balance between efficient and effective response to security challenges and protecting and preserving the same freedoms now threatened by the changing security.

Madisonian democracy as captured in the Constitution and U.S. history rejects the consolidation-of-power features of a Prussian general staff organizational model. However, these same Madisonian principles proved sufficiently flexible to accommodate a large standing army with the advent of the Cold War. Similarly, George Washington honored Madisonian principles by refusing to become chief executive for life, but assumed for the Presidency the power to conduct foreign affairs free of congressional supervision (through the Neutrality Act).

Dwight Eisenhower warned us that the growing concentration of power in the hands of the military-industrial complex posed the greatest threat to our national security, but he also pursued a national security strategy focused on the deterrent threat from nuclear weapons. If deterrence failed and nuclear weapons needed to be employed, then the nuclear authorization process would occur too quickly for Congress to have any meaningful role in declaring war. Today, the debates rage over the powers of the President as Commander-in-Chief balanced with the powers of the Congress to declare war and raise and support

armies. The Foreign Intelligence Surveillance Act, USA PATRIOT Act, and modern means of electronic surveillance are modern tests of one of the most cherished of liberties, the Fourth Amendment’s provisions protecting citizens from unreasonable search and seizure. Yet the call for information-sharing and actionable intelligence complicates that balancing. Inevitably, we must ask ourselves, “What new organizational structures and processes are we willing to accept in the defense of freedom in the 21st century?” And, as important, who gets to choose the new structures and processes?

The question of who gets to choose was at the core of the recent court case pertaining to Ali Saleh Kahliah Al-Marri. Al-Marri, a legal resident of the United States, was arrested in December 2001 for vari-

ous financial crimes, allegedly in support of al Qaeda operations in the United States. After his case was dismissed in court for lack of venue, President Bush declared him an enemy combatant, and he was held in a military prison for 4 years without formal charges and without access to a lawyer. In her decision, Judge Diana Motz of the Second Circuit Court wrote:

[The President] maintains that the authority to order the military to seize and detain certain civilians is an inherent power of the Presidency,

which he and his successors may exercise as they please. To sanction such Presidential authority to order the military to seize and indefinitely detain civilians, even if the President calls them “enemy combatants,” would have disastrous consequences for the Constitution—and the country. For a court to uphold a claim to such extraordinary power . . . would effectively undermine all of the freedoms guaranteed by the Constitution. It is that power—were a court to recognize it—that could lead all our laws “to go unexecuted, and the government itself to go to pieces.” We refuse to recognize a claim to power that would so alter the constitutional foundations of our Republic.²⁸

This decision is part of the natural tug-of-war between the President and Congress. The President claimed “the authority to capture and detain individuals involved in hostilities against the United States” based on his inherent constitutional authority alone, not reliant on a state of emergency or war, subject to no judicial review and contradicting Congress’ explicit instructions in what rights detainees are entitled to. Judge Motz, referring to Judge Jackson’s *Youngstown* decision, ruled that the powers of the President are at their “lowest ebb” because Congress had established procedures for detainee processing in the USA PATRIOT Act.²⁹ Thus Congress, not the President, ultimately decided the procedures used to handle civilian suspects in the war on terror, affirming the Madisonian principle of distributing governmental authority.

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Transforming National Security

From the preceding review, several patterns emerge. First, almost all responsible voices acknowledge that the structures and processes built to respond to the threat environment of the Cold War are ill suited to deal with the security challenges of the 21st century and its new kind of war and peace. Simply put, the status quo is not good enough.

Second, and equally important, greater unity of effort, collaboration, information-sharing, and integration are nearly universally articulated as essential objectives for the transformation of national security organization and processes. The first Directors of National Intelligence (DNIs) have been doing their best to unify the intelligence process. Ambassador John Negroponte outlined changes necessary with his release in October 2005 of the National Intelligence Strategy.³⁰ Director Mike McConnell, in April 2007, built on those reform initiatives with his “100 Day Plan” for greater integration and collaboration. Moreover, the Intelligence Reform and Terrorism Prevention Act of 2004 expanded DNI authorities and thus provided the basis for more effective leadership of the Intelligence Community. Despite that, McConnell has expressed concern that he lacks sufficient authorities to “realize fully the intended benefits.”³¹ For instance, Under Secretary of Defense for Intelligence James R. Clapper recently volunteered to coordinate with McConnell as a jury-rigged solution to the lack of authority that McConnell would be able to exercise over Clapper and Defense Department intelligence activities.³²

Third, most Americans are quite comfortable with divided government—even gridlock—and cherish the principles of Madisonian democracy. Hamiltonianism—and strong executive leadership—has a place in our system of government and culture. However, those exercises of power are most compatible with the American psyche when they are exercised in crisis and for short periods of time—most notably Abraham Lincoln’s suspension of habeas corpus during the Civil War.

Now, of course, we are engaged in a war that President Bush posits will define the 21st century. Therefore, we are challenged to find a workable balance between our Madisonian heritage of decentralized government and the exigencies of today’s security environment urging greater centralization, unity of effort, integration, and collaboration. Transforming our structures and processes is paramount to securing the Nation’s security at home and abroad. Finding ways to overcome the resistance to those changes and strike a reasonable balance that achieves greater coordination and cooperation without taking us down the path toward tyranny will test us all. As Benjamin Franklin told us, those who are willing to sacrifice liberty for security deserve neither.

Final Thoughts

Much of the discussion above has focused on recent national catastrophes. Yet the need for organizational (and cultural and process) transformation permeates our system at the national, state, and local levels. Note, for instance, Steven Pearlstein’s commentary on the relatively minor disagreement between Washington, DC, Mayor Adrian Fenty and the DC Council over “who will be in charge of some of the city’s biggest economic projects.”³³ It is much more than simply moving boxes around the organizational chart. The dispute centers on a Council-proposed new agency, power, and the requirements for consoli-

dation, coordination, and collaboration for more effective management of economic development projects. Not surprisingly, both sides agree that the status quo (two separate organizations, the National Capital Revitalization Corporation and the Anacostia Waterfront Corporation) is not working. Bureaucratic delays—“petty political and jurisdictional squabbles”³⁴—rather than streamlined and accelerated development have been the norm. This is, as Pearlstein notes, about leadership and coordination, relinquishing powers, and compromise—and if the mayor and Council heed his recommendations, it would transform the way in which DC government conducts its business. These discussions are eerily similar to those taking place at the national level, where the stakes are clearly much higher.

All of the discussions above hinge on trust and respect among the parties. One of the successes of Goldwater-Nichols was building a joint professional military education system and a supporting joint officer management system that overcame some of the obstacles to closer collaboration and coordination between and among the Services. The officers would work together—and be educated together. At the National Defense University (NDU), the term *acculturation* is used to describe the process in which officers of the different Services would understand and become better sensitized to the individual positions and organizational cultures of the officers from the other Services. Ideally, professional networks founded on mutual trust and respect would emerge. Down the line, when a difficult choice confronts this nation, NDU graduates, in now even more senior positions, could draw on that network of relationships and contribute to a more reasoned process and decisions. What is needed today is to more fully develop the personnel management and education systems across the intra-agency, interagency, and international communities that can replicate the experiences at the Department of Defense and NDU.

Our nation’s founders built a remarkable constitutional framework that has served us well for 220 years as we evolved from a fledgling nation of 13 former British colonies tied to the Atlantic seaboard to our current position of international prominence, if not dominance. Scholars praise the Constitution’s inherent flexibility that has contributed to the stability of our legal underpinnings and society writ large. Now we are faced with new challenges that will test the enduring strength of those foundations and ourselves as individuals and as a nation. We see ourselves as a special people with a destiny and responsibility. We have risen to previous callings. Trust that we will stand as a nation united and not divided as we face the challenges that face us in the years ahead.

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Notes

¹ The Key West Agreement, formally known as the Function of the Armed Services and the Joint Chiefs of Staff, was a paper by James V. Forrestal, the first Secretary of Defense, outlining the division of air assets among the Army, Navy, and Air Force. The Newport Agreement resolved the tension between the Navy and Air Force over control of nuclear weapons in favor of the Air Force, giving the Air Force control over all strategic nuclear weapons.

² See Jeffrey G. Barlow, *Revolt of the Admirals: The Fight for Naval Aviation, 1945–1950* (Washington, DC: Naval Historical Center, 1994).

³ See Stephen A. Wolfe, “Leaving Key West: The Struggle to Rationalize Roles and Missions,” in *The American Military in the Twenty-First Century*, ed. Barry M. Blechman et al. (New York: St. Martin’s Press, 1993).

⁴ Louis Henkin, “Foreign Affairs and the Constitution,” *Foreign Affairs* (Winter 1987–1988), 284–310.

⁵ See Alfred Cumming, memorandum, “Statutory Procedures Under Which Congress Is to Be Informed of U.S. Intelligence Activities, Including Covert Actions,” Congressional Research Service (January 18, 2006).

⁶ “When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.” Justice Jackson. Concurring opinion, *Youngstown Co. vs. Sawyer*. <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=343&invol=579>>.

⁷ David C. Jones, “Reform: The Beginnings,” in *The Goldwater-Nichols DOD Reorganization Act: A Ten-Year Retrospective*, ed. Dennis J. Quinn (Washington, DC: National Defense University Press, 1999), 3.

⁸ *Ibid.*, 13.

⁹ Michael R. Gordon and Bernard E. Trainor, *The Generals’ War* (Boston: Back Bay Books, 1995).

¹⁰ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: Norton, 2004).

¹¹ *Ibid.*, xvi.

¹² The Iraq Study Group, *The Iraq Study Group Report* (New York: First Vintage Books, 2006).

¹³ See General David Petraeus interviewed on *Fox News Sunday*, June 17, 2007.

¹⁴ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington, DC: The White House, 2006), 52–53.

¹⁵ *Ibid.*, 55–64.

¹⁶ Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina* (Washington, DC: U.S. Government Printing Office, 2006).

¹⁷ *Ibid.*, 1 (emphasis in original).

¹⁸ *The Federal Response to Hurricane Katrina*, 65.

¹⁹ *Ibid.*, 67.

²⁰ *Ibid.*, 71.

²¹ *Ibid.*, 76–78.

²² *Ibid.*, 79.

²³ *Ibid.*, 82.

²⁴ The White House, *National Security Presidential Directive 51 and Homeland Security Presidential Directive 20* (Washington, DC: The White House, 2007).

²⁵ Spencer S. Hsu, “Bush Changes Continuity Plan,” *The Washington Post*, May 10, 2007, A12.

²⁶ John Robb, *Brave New War* (Hoboken, NJ: John Wiley & Sons, 2007).

²⁷ Clinton Rossiter, ed., *The Federalist Papers* (New York: Mentor, 1961), 290.

²⁸ *Al-Marri v Wright*, 06–7427 (2^d Circuit, 2007), 76–77.

²⁹ *Ibid.*, 65–68.

³⁰ Office of the Director of National Intelligence, *National Intelligence Strategy*, October 26, 20005, available at <www.fas.org/irp/news/2005/10/dni102505.html>.

³¹ Michael Jacobson, “DNI’s 100 day plan,” Counterterrorism Blog, April 26, 2007.

³² Siobhan Gorman, “Intelligence Policies Shift: Pentagon spy chief rolling back some of Rumsfeld’s policies,” *Baltimore Sun*, May 26, 2007.

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